Supreme Court, U.S.
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No. 07-1405

IN THE

SUPREME COURT OF THE UNITED STATES

DR. ROBERT OLSON,
PETITIONER,
VS.
CONTINENTAL RESOURCES, INC.,
an Oklahoma Corporation; et al.
RESPONDENTS.

PETITION FOR REHEARING ON DENIAL OF PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA, DIVISION II, # 102398
DISTRICT COURT CASE CJ-2004-121

PETITION FOR REHEARING

Petitioner

Dr. Robert Olson,
Pro Se,
9022 E 60th Street
Tulsa, Oklahoma,
74145
918 252 1987

Counsel of Record

Respondents' counsel

Glenn A. Devoll
Julia C. Rieman
Gungoll, Jackson, Collins,
Box & Devoll, P.C.
P.O. Box 1549
Enid, Oklahoma 73702

Attorneys for Defendants
Continental Resources, Inc.,
Harold Hamm and
Tom Luttrell.

List of Parties

ROBERT OLSON

Plaintiff, Appellant'
Petitioner,

vs.

CONTINENTAL RESOURCES, INC.,
an Oklahoma Corporation;
HAROLD HAMM, an individual and
President and Chief Executive Officer
of Continental Resources, Inc.;
TOM LUTTRELL, an Individual and
Vice President
of Continental Resources, Inc.;
DAVIS OPERATING COMPANY,
an Oklahoma Corporation; and
WILLIAM H. DAVIS,
an Individual and President of
Davis Operating Company,

Defendants, Appellees,
Respondents.

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Introduction

Arguments for a Rehearing in United States Supreme Court Case # 07-1405 are set out below:

I. History

My Name is Robert Olson. I have earned a B.S. Degree in Chemical Engineering and a Ph. D. Degree in Geology from Rice University in Houston, Texas. I have been an Exploration Geologist since 1975. As an Exploration Geologist for smaller oil and gas companies, my compensation consisted of lower cash salary plus an equity interest in the oil and gas production found through my efforts. This interest in the oil and gas production usually consisted of an assigned overriding royalty on the original base oil and gas leases. This gives this assigned override title superiority over any subsequent assignments.

In 1984, I. Dr.Robert Olson was assigned a 1.5% overriding royalty on the base oil and gas leases in Section 17, T16N-R11W, Blaine County, Oklahoma. This overriding royalty was assigned before production was established, effective on first production. See USSCt # 07-784, App. Z. The Matli # 1-17 well was drilled in Section 17, T16N-R11W, and was completed capable of producing

oil and gas in commercial quantities in 1984. See USSCt # 07-784, App. G3, pgrf 2. The overriding royalty assignment was converted into a vested mineral estate at first commercial production in 1984. The assignment did not contain an "extension and renewal" clause. See USSCt # 07-784, App. G5, pgrf 7. As long as the requirements of the primary base oil and gas leases are fulfilled, an "extension and renewal" clause is not necessary.

On September 22, 1998, Continental Resources, Inc. (CRI) temporarily ceased production from the Matli # 1-17 well. See USSCt # 07-784, App. G3, pgrf 3 and App. HH, HH3, HH5, , and cross check for year in USSCt # 05-1057,App. page 135.

On May 1, 1999, CRI sold its interest in the wellbore to Davis Operating Company, Inc. (DOC). See USSCt # 07-784, App. HH1. The mineral royalty interest owners accepted shut-in royalty payments as were stipulated in the original base oil and gas leases from DOC. See USSCt # 07-784, App. G4, pgrf 4, . Acceptance of the stipulated shut-in royalty payments ratified the original existing oil and gas leases. See USSCt # 07-784, App. QR.

On September 13, 1999, CRI filed new oil and gas leases on Section 17, T16N-R11W, Blaine County, Oklahoma. See USSCt # 07-784, App. G4,

pgrf 4. On September 20, 1999, DOC recompleted the Matli # 1-17 well and brought it back into commercial production. See USSCt #07-784, App. G4, pgrf 4, . (Note the semi - official time limit yardstick of one year without production, for an oil and gas lease to be declared as abandoned, had not passed. But oil and gas lease ratification by shut-in royalty payments makes the abandonment or surrender arguments inapplicable.)

Since CRI bought and filed new leases in September and DOC moved in and recompleted the Matli # 1-17 well in September 1999, CRI sued DOC for trespass. USSCt # 07-784, App. G4, pgrf 4. DOC maintained the original leases were valid.

CRI and DOC settled the suit by agreeing to operate under the new leases and release the old leases to extinguish Dr. Olson's override. Dr. Olson claims this is not legal. Please see *Cain v. Neumann*, 316 S.W.2d 915, also please see USSCt # 05-1057, App. page 161. The United States Supreme Court has not considered this sham. CRI and DOC settled for the same leasehold interest they had before the suit. The only difference was CRI and DOC refused to pay Dr. Olson's override. DOC switched its point of view and seems to have paid a debt to CRI with its share of the stolen override. See the settlement agreement, USSCt # 05-1057, App. pages 129-134.

Dr. Olson sued CRI and DOC as well as the principals and was denied in Blaine County District Court; appealed to the Oklahoma Supreme Court and was denied there. USSCt # 07-784, App. G. Dr. Olson then appealed to the United States Supreme Court and was denied. USSCt # 07-784.

Blaine County District Court Case CJ-2004 -121 is a refile of Case CJ-2002-151. The refile is based on the frauds perpetrated by the adverse parties and the Judge. A comprehensive discussion of the lower court frauds can be found in USSCt # 07-784 and USSCt # 05-1057.

Production and acceptance of royalty payments by the mineral owners continued unabated throughout the time CRI and DOC "transitioned" from the "old leases" to the "new leases". USSCt # 05-1057, App Page 135, 137-138.

Dr. Olson contends that:

A. Since shut-in royalty payments were accepted by the mineral owners, and
B. As long as production did not cease for longer than one year, and
C. As long as production continued throughout the "transition" period from the "old leases" to the "new leases" and royalty payments were accepted throughout by the mineral owners, and

D. Dr. Olson was paid his override for a time after the "transition" period, USSCt # 05-1057, App. pages 135-154, and

E. CRI and Davis did not vacate the premises.

Therefore the original base oil and gas leases were not extinguished. Therefore Dr. Olson's override claim was not extinguished. *Cain v. Neumann,* 316 S.W.2d 915 (1958), USSCt # 07-784, App. MM; USSCt # 05-1057, App. pages 161-162 ; *Cole v. Philadelphia Co.*, 345 Pa. 315, 26 A.2d 920 (1942). (Go to 26 A.2d 920 because the Westlaw copy has two significant typo errors in it.)

II. Legal Argument

A. An Extension and renewal clause is not necessary herein because:

1. Vested Mineral Estate

When production was established in the Matli # 1-17 well in 1984, Dr. Olson's assigned override interest in Section 17, T16N-R11W, was transformed into a vested mineral estate, no less so than the working interest owners. This vested mineral estate is not subject lease expiration but to ~~the question of lea~~se forfeiture. *Godfrey v. McArthur,* 186 OK 144, 96 P.2d 322, 325 (1939). USSCt # 07-784, pg 6. The lease (or vested mineral

estate) terminates only when the grantor has successfully brought an action to cause forfeiture of the lease. *Olson v. Briscoe,* 10 P.3d 246. (Yes, Dr. Robert Olson v. Briscoe) USSCt # 07-784, pg 6.

The mineral owners never filed any suit to cause forfeiture. Also, Please see *Stewart v. Amerada Hess Corp.,* 1979 OK 145, 604 P.2d 854, 858, USSCt # 07-1405, Pgs 22-23.

The word 'lease' has two different meanings (which causes confusion) and each of these meanings has a different legal status. The lease before production is established has no proven value and its life is proscribed by its expiration date. The lease in this pre-production state can be extended and/or renewed as a lease. However, with a habendum clause, when production is established, the life of the lease transitions into 'as long as production continues in commercial quantities'. With production, a value of the 'lease' can be established by an engineering analysis. This is the vested mineral estate and is not subject to lease expiration. *Godfrey v. McArthur,* 186 OK 144, 96 P.2d 322, 325. The confusion is that the word 'lease' is used to refer to both situations. An oil and gas 'lease' before production is established, can be extinguished by surrender or release. *La Laguna Ranch Company v. Dodge,* 18 Cal.2d 132, 114 P.2d

351, 353. USSCt # 07-1405, App. J-10, (OK Sup. Ct Judge Carol M. Hansen). After production is established, the oil and gas 'lease' terminates only when the grantor has successfully brought an action to cause forfeiture of the 'lease'. *Olson v. Briscoe,* 10 P.3d 246. (OK Sup Ct Judge Carol M. Hansen) USSCt # 07-784, page 6.

2. There was no effective release of the oil and gas leases.

For an oil and gas lease to be legally released or surrendered, there must be a vacation of the premises by the operator. *Blackwell Oil and Gas et. al., v. Whited,* 1921 OK 8, 196 P. 688, USSCt # 07-784, pgs 7-8. *Hudspeth v. Schmelzer,* 77 P.2d 1123.

3. Intrinsic Fraud

Continental Resources, Inc. filed releases of "all right, title; interest" in the old leases. USSCt # 05-1057, App. pgs 124-128. This is intrinsic fraud because Continental Resources did not own "all right title; interest" in the old leases. Thus these releases are false documents of title and are thus forgeries.

4. Extrinsic Fraud

When District Court Judge Franklin accepted

the *ex parte* clandestine, substantive Case Summary Notebook from Defendants' counsel without requiring notification to the Plaintiff (Dr. Robert Olson), thus not allowing Plaintiff to respond to the *ex parte* clandestine, substantive Case Summary Notebook, he:

A. violated the Code of Judicial Conduct. USSCt # 07-1405, App. H and P, Canon 3B(6) and Canon 3B(6)(b).

B. became a member of the Defense Team,

C. lost jurisdiction of the case. *Nardi v. Poinsatte,* 46 F.2d 347, *Petition of Dare,* Okla. Crim. App. 370 P.2d 846 (1962).

Thus Judge Franklin trampled on my (Dr. Robert Olson) United States Constitutional Fourteenth Amendment right to due process of law and the right to a fair trial.

III. Why This Case is Important

What Dr. Olson, is facing here is (a) the white collar theft of his assigned, vested personal property (the assigned oil and gas override) through intrinsic fraud against the title of the override, perpetrated by the Defendants, the Defendants' counsel and the Judge and (b) the extrinsic fraud of the Judge accepting the clandestine, *ex parte,* substantive Case Summary

Notebook without giving notice to the Plaintiff and allowing time for a response from Plaintiff. USSCt # 07-1405, App. EE, pg EE-8, pgrf 11. It makes no difference if the fraud is active or constructive, only that the fraud occurred. *Patel v. OMH Medical Center, Inc.*, 1999 OK 33, 987 P.2d 1185. The mere fact of substantive *ex parte* communication between Defendants' counsel and the Judge is sufficient appearance of extrinsic fraud to call for a new trial. *United States v. Koskela*, 86 F.3d 122, 125 (8th Cir. 1996).

1. Oil and Gas Assigned Override Title Status

From Petitioner's research, it appears that the United States Supreme Court has not considered the Title Status of the assigned override since 1941, and then in the state of Texas only. *Phillips v. Taylor, et.al.*, 116 F.2d 994, 313 U.S. 565, 61 S.Ct.941 (1941). If the United States Supreme Court denies this Petition for Rehearing and consequently this Petition for Writ of Certiorari, the Court leaves in place an Oklahoma Supreme Court decision that conflicts with:

(a) Kansas: *Campbell v. Nako Corporation*, 195 Kan. 66, 402 P.2d 771 (1965),The Old Lease--New Lease fraud.

(b) Pennsylvania: *Cole v. Philadelphia Co.*, 26 A.2d 920, Fake surrender of producing lease.

(c) Texas: *Cain v. Neumann*, 316 S.W.2d 915, Fake surrender of lease.

2. Fiduciary Duty

The United States Supreme Court has never considered the legal question that the assigned from the base oil and gas leases, vested by production, oil and gas lease override is a creditor beneficiary of the participation agreement in an oil and gas deal; and thus the above described override is a creditor beneficiary of the operating agreement.

When the participants in an oil and gas deal sign the participation agreement, they agree to fund, or cause to be paid from production revenue, the existing lease burdens by agreeing to the net revenue interest stipulated in the participation agreement. The override described above is one of the lease burdens that the participants agree to fund.

The operating agreement is an agreement among the participants and someone (the operator) who will supervise the day-to-day operations of drilling and producing the well or project. The operator can be one of the participants. The operating agreement sets out how the participants' obligations and responsibilities will be fulfilled. This operating agreement is signed by the

participants and the operator, making the operator the participants' agent in the project. Thus the above described override interest owner is a creditor beneficiary of the operating agreement. Thus the fiduciary duty.

In 1997, Oklahoma Supreme Court Vice Chief Justice Summers recognized that there was and should be some kind of a responsibility relationship from the operator and the override interest owner. *Goodall v. Trigg Drilling Company, Inc.*, 944 P.2d 292, 138 Oil and Gas Rep. 118, 1997 OK 74. Please see 944 P.2d pages 296-297, pgrfs 8, 9, 10. VCJ Summers called this relationship "Quasi-fiduciary".

Paragraph 8

8. While Oklahoma case law has not enunciated the exact nature of the special relationship between a royalty owner and an operator, nearly all cases have agreed that a special relationship exists. *Young*, supra; *Rees*, supra; *Hivick*, supra; *et al.* The relationship has been defined as one "similar to a trustee". *Young*, at 309. Clearly, the operator has superior knowledge of the production of the well, which may not be readily available to the royalty owners. The operator has a statutory duty to hold the revenue for

> benefit of the legal owners. Tit. 52 O.S. Supp. 1995 Section 570.10. Such a duty includes the notification of royalty owners of their financial benefits, and the methods by which the proceeds may be paid. Section 579.10 [570.10?] (B)(3)(c). While an operator may maximize its own business profits, it should not be allowed to do so to the detriment of the royalty owners who have bestowed confidence and trust in the business integrity of the operator.

I think the only reason Oklahoma Supreme Court Vice Chief Justice Summers did not recognize the relationship between the operator and the override interest assigned from the Base leases as fiduciary duty was because he did not have a participation agreement in front of him. (the link).

For the privilege of acting as agent for the distribution of the interest owner's (including the override interest owner's share) shares of production revenue and being able to bank the interest on a one to two month float on the money (Title 52 Section 570), the fiduciary duty does not impose too onerous a burden on the operator.

3. Energy Independence

With the new political push for increased oil and gas drilling to move toward energy independence, determination of the title status of the assigned oil and gas override, assigned from the base leases, effective from first production, vested by production, would be immediately germane to the entire oil and gas industry.

4. Insider Law

On August 27, 2003, Defendants filed an application for attorney fees which contained an entry for 2.5 hrs preparing and highlighting a notebook for the Judge. USSCt # 05-1057, App. pg 98, 7/11/03. The summary judgment hearing was held on 7/17/03. USSCt # 05-1057, App. pg 104.

At a hearing on June 17, 2004, Judge Franklin admitted he no longer had the notebook. (USSCT # 07-784, App. X, pg 7.) This is a felony violation of O.S. Title 21, Section 461, Destruction of Court Documents. When Judge Franklin accepted the Notebook, it became a Court Document.

At a hearing on January 13, 2004, concerning the disqualification of Judge Franklin, (CJ-2004-121), Judge Ray Dean Linder testified from the

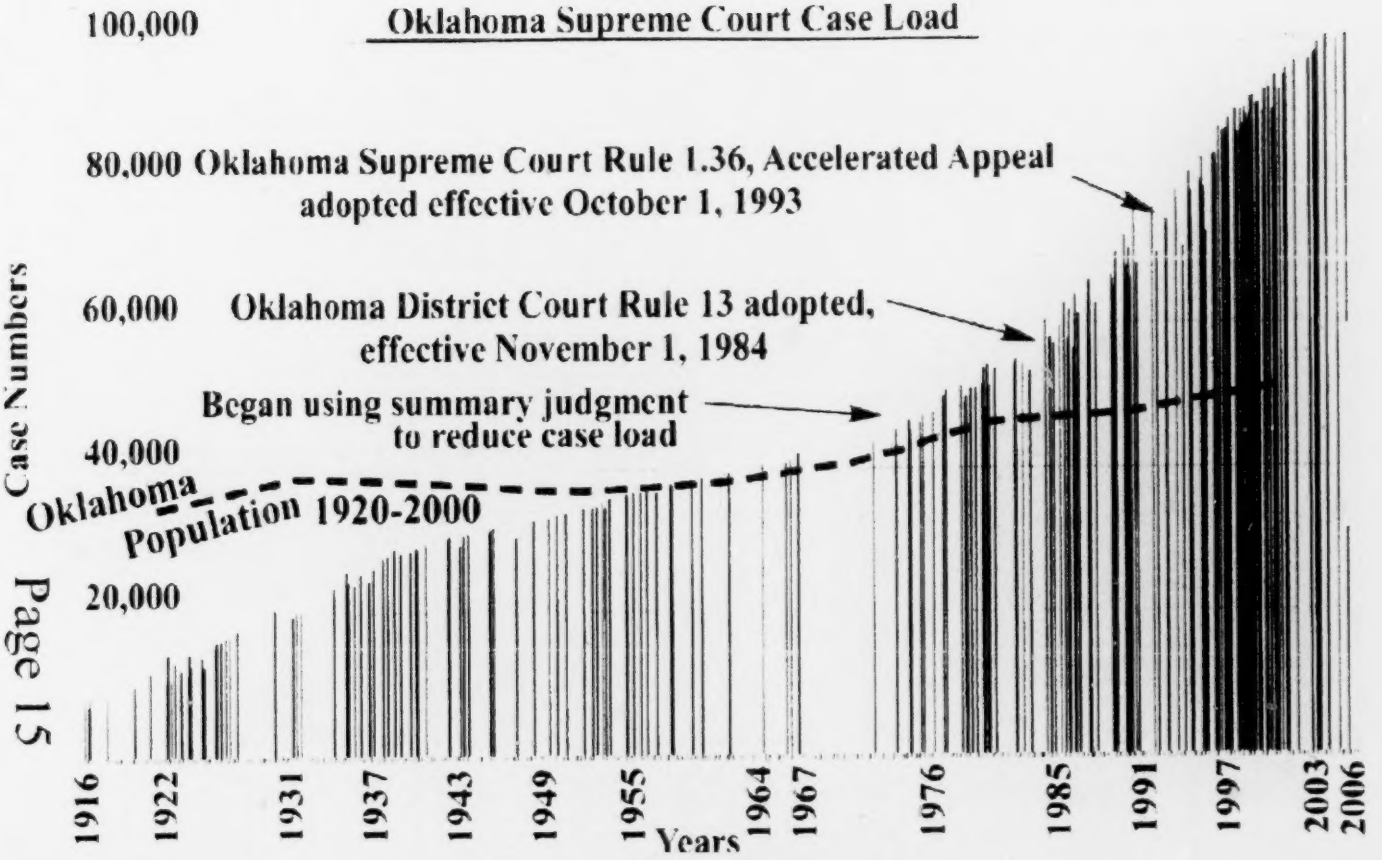
bench that such notebooks are common practice in Oklahoma. USSCt # 05-1057, App. pgs 35-36, lns [9] - [18], and pg 48, lns [25] - [1], and pgs 50 - 52. The affidavit submitted at the hearing, (at USSCt # 05-1057, App. pgs 111 - 113) describes what Defendants' Counsel say was done and gives a timeline for their actions.

By this affidavit, Defendants' counsel admit violating the attorney's Code of Professional Conduct and shows where Judge Franklin violated the Code of Judicial Conduct.

This is no small matter. This kind of activity by the legal profession is the epitome of Insider Law. Judge Ray Dean Linder's testimony from the bench gives an indication of the long term pervasiveness of the practice of Insider Law in Oklahoma.

The Oklahoma Supreme Court Case Load graph (page 15 herein) which plots Case Number vs. years, shows a dramitic increase in appeals that corresponds to the time frame of the practice of Insider Law in Oklahoma as testified to by Judge Ray Dean Linder, *supra*. This plot indicates the beginning of the public's loss of faith in the Judicial System in Oklahoma.

Insider Law is just as much a fraud on the public as Insider Trading on the stock market. We have just had a very stark example of the effects of the fraud of Insider Activity with the stock market crash.


Oklahoma Supreme Court Case Load
100,000
80,000
60,000
40,000
20,000
Case Numbers
Oklahoma Supreme Court Rule 1.36, Accelerated Appeal adopted effective October 1, 1993
Oklahoma District Court Rule 13 adopted, effective November 1, 1984
Began using summary judgment to reduce case load
Oklahoma Population 1920-2000
1916
1922
1931
1937
1943
1949
1955
1964
1967
1976
1985
1991
1997
2003
2006
Years

Summary

Dr. Olson's oil and gas lease override was stolen from him through intrinsic fraud by the defendants and extrinsic fraud (could be construed as constructive fraud) by the court.

Prayer

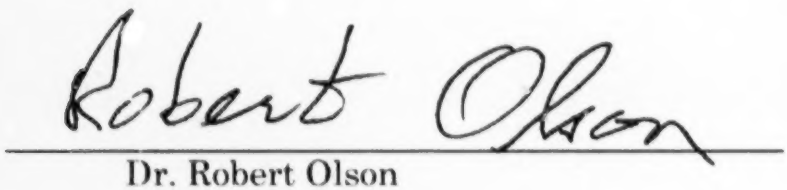
A strong distinction of the legal status between an "oil and gas lease" before production is established and an "oil and gas lease" after production has been established is necessary. Before production, the "lease" is a contract with a definite expiration date. After production, the "lease" is a vested mineral estate, effective as long as production continues.

A designation of creditor beneficiary status for the base lease override, derived from the participating agreement and the accompanying operating agreement would stop a lot of operator theft and would therefore eliminate many lawsuits.

The granting of a new trial to Dr. Olson because of the shown Insider Law fraud in this case would be a step toward restoring the public's faith in the legal system in Oklahoma.

Dr. Robert Olson prays the United States Supreme Court favors this Petition for Rehearing and allows the consideration of Dr. Olson's Petition For a Writ of Certiorari, USSCt # 07-1405, to continue.

Respectfully submitted,



Dr. Robert Olson
9022 E 60th Street
Tulsa, Oklahoma 74145
918 252 1987

List of Opposing Counsel, and Other Interested Parties

Robert B. Sartin
Barrow & Grimm, P.C.
610 South Main, Suite 300
Tulsa, Oklahoma 74119-1248
918 584 1600

Attorneys for Defendants
Davis Operating Company,
William H. Davis.

Glenn A. Devoll
Julia C. Rieman
Gungoll, Jackson, Collins,
Box & Devoll, P.C.
P.O. Box 1549
Enid, Oklahoma 73702

Attorneys for Defendants
Continental Resources, Inc.,
Harold Hamm and Tom Luttrell.

Blaine County Court Clerk
212 N. Weigle
Watonga, Oklahoma 73772.

Stephen J. Krise
Assistant Attorney General
Oklahoma Attorney General's Office
Chief Litigation Section
4545 North Linclon Boulevard, Suite 260
Oklahoma City, Oklahoma 73105-3498

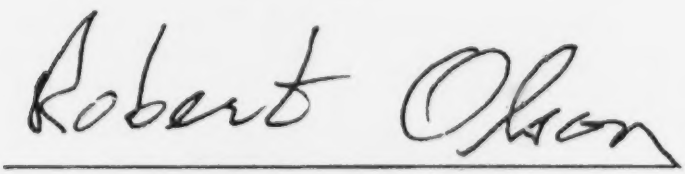
Dr. Robert Olson
9022 E 60th Street
Tulsa, Oklahoma 74145
918 252 1987

Certificate of Good Faith

I, Dr. Robert Olson, do hereby certify that this Petition for Rehearing is restricted to the grounds specified in Paragraph 2. of Rule 44 of the United States Supreme Court Rules adopted July 17, 2007.

I, Dr. Robert Olson, do hereby also certify that this Petition for Rehearing is presented in good faith and not for delay.

Respectfully,



Dr. Robert Olson
9022 E 60th Street
Tulsa, Oklahoma 74145
918 252 1987